IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 13TH APRIL 2007 / 23RD CHAITHRA 1929

WP(C).No. 12443 of 2007(F)

PETITIONER:

BIJOY MOOKEN, S/O.JOHNY, MOOKEN HOUSE,
MISSION QUARTERS, CHEMBOOKAVU VILLAGE,
THRISSUR TALUK.

BY ADV. SRI.RAJESH CHAKYAT

RESPONDENTS:

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1. THRISSUR URBAN CO-OP. BANK LTD NO.87,
THRISSUR REO. BY ITS GENERALA MANAGER.

2. THE SPECIAL SALE OFFICER,
THRISSUR URBAN CO-OP. BANK GROUP,
O/O.THE ASSISTANT REGISTRAR OF CO-OPERATIVE
SOCIETIES,THRISSUR.

3. SIDHARTHAN, S/O.CHATHU VADAKEVELA-
PARAMBIL HOUSE, ONATHUKUNNU P.O.,
THEKKUMKARA VILLAGE, MUKUNDAPARAM TALUK,
THRISSUR DISTRICT.

4. SIJU, S/O.SIDHARTHAN, VADAKEVELAPRAMBIL
HOUSE, ONATHUKUNNU P.O.,THEKKUMKARA VILLAGE,
MUKUNDAPARAM TALUK, THRISSUR DISTRICT.

5. ROSILY, W/O.JOHNY, MOOKEN HOUSE, MISSION
QUARTERS,CHEMBOOKAVU VILLAGE, THRISSUR TALUK.

R1 BY ADV. SRI.C.D.DILEEP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 13/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.12443 of 2007

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Dated this the 13th day of April, 2007.

JUDGMENT

Heard counsel for the petitioner and Standing Counsel appearing for the first respondent. Petitioner's case is that Bank cannot sell petitioner's residential house before sale of the mortgaged property for which loan was availed. However, it is conceded that award is passed in arbitration proceedings against petitioner and respondents 3 to 5 awarding an amount of Rs.21 lakhs to be recovered from them. Counsel for the first respondent-Bank submitted that on account of dispute between the petitioner and 5th respondent in civil court, Bank was not in a position to sell the mortgaged property. If the mortgaged property cannot be sold for any reason, then it is open to the Bank to attach and sell any property of the award-debtors as the award is executable against them personally. Therefore, the challenge against proceedings for recovery by attachment and sale of petitioner's residential house is rejected. It is open to the Bank to attach and sell any item of property of defaulters namely, petitioner and respondents 3 to 5. However, I feel reasonable time can be granted to the petitioner and other debtors to arrange for sale of any property including any part or full of the

mortgaged property and settle liability. Accordingly W.P. is disposed of directing the respondents to withhold all recovery proceedings for one month from now and if in between petitioner produces any agreement for sale of any part of the property for settlement of liability, the Bank should grant time till 30.6.2007 for the petitioner to settle liability by then, failing which the Bank is free to proceed for attachment and sale of any property of the defaulters irrespective of whether it is mortgaged or not. If petitioner does not give any concrete evidence such as sale agreement for settlement of liability within one month from today, the Bank can proceed for sale on expiry of one month.

C.N.RAMACHANDRAN NAIR
Judge

pms